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Carol Matthey  
Deputy Bureau Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Verizon Request to Count Investment of Northpoint in Out-of-Region Merger  
Commitment, CC Docket No. 98-184

Dear Ms. Matthey:

On August 7, 2000, Verizon entered into a merger agreement for the purchase of Northpoint Communications, a nationwide provider of digital subscriber line (DSL) services. Less than 120 days later, Verizon unilaterally terminated the merger agreement, citing the deterioration in Northpoint's balance sheet as the primary justification for its decision to abort the acquisition. Now, a year and a half later, Verizon contends that it satisfied the Commission's obligation to "spend" money in pursuit of out-of-region services in that aborted purchase of Northpoint. Verizon's claim is that the Commission never intended that Verizon actually provide any services, but rather that Verizon simply spend money with the good faith intent of using that money to provide services at some point in the future. In short, Verizon contends that its subjective intent, and not what actually happened, must have been all that concerned the Commission in adopting the out-of-region requirement.

The Commission's approval of the merger of Bell Atlantic and GTE carried with it certain conditions. One such condition, the so-called "Out-of-Region Expenditure" condition, required the combined entity to eschew its traditional reluctance to compete outside of its monopoly territory:

Bell Atlantic/GTE will spend a total of at least \$500 million (the "Out-of-Region Expenditure") between the Merger Closing Date and the end of the 36<sup>th</sup> month

after the Merger Closing Date to provide services, including resale, that compete with traditional local telecommunications services offered by incumbent local exchange carriers or to provide Advanced Services to the mass market (“Competitive Local Service”) outside the Bell Atlantic and GTE Service Areas (“Out-of-Region Markets”), within the United States.<sup>1</sup>

In the Bell Atlantic/GTE Merger Order, the Commission made clear its policy goals in adopting the requirement. Specifically, the Commission stated its conclusion that “the Applicants’ out-of-region competition commitment is sufficient to ensure that residential consumers and business customers outside of Bell Atlantic/GTE’s territory will benefit from meaningful, facilities-based competitive service. We also anticipate that this condition will stimulate competitive entry into the Bell Atlantic/GTE region by the affected incumbent LECs.”<sup>2</sup> Granting Verizon the relief it requests in this proceeding in no way advances those goals. In the first instance, an aborted acquisition attempt in no way provides consumers outside of Verizon’s monopoly territory any hope of competition from Verizon, let alone facilities-based competition. Second, and perhaps more importantly, it is difficult to imagine how any incumbent LEC would be stimulated to enter Verizon’s territory to compete, based upon Verizon’s aborted effort to purchase Northpoint. Indeed, were the Commission to approve Verizon’s request for \$150 million in credit in this proceeding, the incumbent telephone companies would breathe a collective sigh of relief, because Verizon would not be forced to compete in any of their regions after all.

Contrary to Verizon’s claims, the Commission clearly intended that Verizon actually provide service to out-of-region customers, not just spend money in an aborted attempt to do so. For example, the Commission equated the out-of-region monetary targets with specific subscriber counts, suggesting strongly that the Commission viewed the monetary expenditure requirement as a means to actually provide service to customers, not an abstract fiscal target. “Until the time this Condition is satisfied, Bell Atlantic/GTE shall meet the following interim targets: between the Merger Closing Date and the end of twelve months after the Merger Closing Date, Bell Atlantic/GTE shall have spent at least \$100 million or provided service over at least 50,000 customer lines in Out-of-Region Markets; and by the end of twenty-four months after the Merger Closing Date, Bell Atlantic/GTE shall have spent at least \$300 million or provided service over at least 150,000 customer lines in Out-of-Region Markets.”<sup>3</sup> Indeed, the Commission even gave Verizon an “out” from the specific monetary targets altogether: if Verizon could show it provided service to at least 250,000 out-of-region customers, it would have no expenditure proof requirements whatsoever. “Notwithstanding the expenditures, the merged firm will be deemed to have satisfied the out-of-region commitment if it provides service, during the 36-month period described above, over at least 250,000 customer lines that are used to provide competitive local service in out-of-region markets.”<sup>4</sup> By making a set number of customers the exact equivalent of a set amount of money expended, the

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<sup>1</sup> BA/GTE Merger Conditions at ¶ 43.

<sup>2</sup> BA/GTE Merger Order at ¶ 321.

<sup>3</sup> BA/GTE Merger Conditions at ¶ 48.

<sup>4</sup> BA/GTE Merger Order at ¶ 319.

Commission made clear that Verizon's obligation was not simply to spend money, but rather to actually serve customers.

The theory under which Verizon now seeks credit in this docket is facially absurd. Under Verizon's theory, it could participate in auctions for assets of out-of-region carriers that required, for example, a down-payment, lose the auction, and still count the lost down payment towards its out of region commitment. Or, Verizon could fund an internal study to determine whether it should participate out of region, conclude that it should not do so, and then count the money that funded the study towards its merger condition commitment. What if Verizon spent \$150 million dollars on telecommunications equipment that turned out not to work? Would Verizon be entitled to credit if it simply demonstrated a good faith belief that the equipment was functional? Perhaps most absurdly, under Verizon's theory, if the FCC or the Department of Justice had denied Verizon authority to merge with Northpoint because such a merger would be anticompetitive, any money spent by Verizon still would have counted towards the Bell Atlantic/GTE out-of-region merger commitment.

The merger condition requirement is clear: "As a condition of this merger, between the merger closing date and the end of the 36th month thereafter, the combined firm will spend at least \$500 million to provide competitive local service and associated services outside of the Bell Atlantic and GTE legacy service areas."<sup>5</sup> Verizon not only has to spend the money, Verizon also have to provide service. Because Verizon never consummated its merger with Northpoint, it is impossible for Verizon to claim that it ever provided out-of-region service through Northpoint. Instead, Verizon contends that it made a "good faith" effort to obtain customers out of region, and that its effort simply did not pay off. Verizon argues that its failure to consummate a merger with Verizon should not prevent it from claiming credit for the \$150 million it spent in pursuit of Verizon, because "[l]ike any investment a business makes, there is always a risk the investment may not yield the desired outcome."<sup>6</sup>

Verizon's logic might work if it had actually deployed services to potential customers, and those customers simply did not sign up. But Verizon not only never deployed such services – by canceling its merger with Northpoint, it ensured that it would never even be capable of deploying such services. Indeed, at the time it announced its Northpoint acquisition, Verizon represented to the Commission that the public interest benefits of the merger could not be realized until the merger was actually closed. In its pleading before the Commission, Verizon argued that, "[t]he sooner the transaction can close, the sooner the public interest benefits noted above can be realized."<sup>7</sup> There is no question that Verizon subsequently terminated the merger.<sup>8</sup> Perversely, Verizon now claims that the public interest benefits of that merger were actually realized even though

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<sup>5</sup> BA/GTE Merger Order at ¶ 319.

<sup>6</sup> Verizon Evans Letter at 1.

<sup>7</sup> *Joint Petition of Northpoint Communications Group, Inc., and Bell Atlantic Corp. for Approval of Agreement and Plan of Merger*, New York Public Service Commission, at 11 (Aug. 23, 2000).

<sup>8</sup> "Verizon Terminates NorthPoint Merger Agreement," available at <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=46368> (rel. Nov. 29, 2000).

it never happened, because Verizon spent money before changing its mind and deciding not to purchase Northpoint. The Commission public interest goals in adopting the out-of-region merger condition cannot be deemed met by a merger that never closed and services that were never provided.

Verizon's year and a half delay in seeking "credit" for its failed Northpoint investment should not pass the Commission's notice. Indeed, it is suspicious that Verizon waited until nearly the end of its 36-month deadline before seeking the instant relief – perhaps Verizon feels that the Commission will take pity on it because of the short timeframe remaining. In its press release announcing the termination of the merger in 2000, Verizon contended that it would "meet its merger commitments for expansion through a variety of means, including its acquisition of OnePoint Communications Corp. and its strategic relationship with Metromedia Fiber Network, Inc. The company also plans to serve its large business customers outside its current territory and will expand its network in selected locations to serve them and other new customers as well."<sup>9</sup> Verizon has clearly given up on plans to actually compete out of region. There was no indication in its release that Verizon would count the money it spent in the aborted acquisition of Northpoint towards its merger obligations, because Verizon intended to (and indeed did) write off that investment entirely. Not only did Verizon write off its Northpoint investment, Verizon disclosed in its financial filings that its fourth quarter 2000 results were *positively* affected by "the write-off of its investment in NorthPoint Communications Corp. as a result of the deterioration in NorthPoint's business, operations and financial condition."<sup>10</sup> Indeed, Verizon wrote off *more* than the \$150 million investment.<sup>11</sup> Having written off that investment from its balance sheet in its entirety (a fact that Verizon has not mentioned to the Commission), Verizon now claims that it has satisfied its obligation to compete out of region. The Commission cannot permit Verizon to have it both ways.

Buying a lottery ticket does not allow the purchaser to claim to be a millionaire until the right numbers actually come up. Spending \$150 million as a down payment to acquire a telecommunications company does not allow Verizon to claim that it provided out-of-region service unless it actually purchases the company and provides such services. Verizon has not complied with its merger conditions, and the Commission must deny Verizon's request for credit against those conditions for the failed Northpoint merger. The \$200 million that Verizon has yet to spend on out-of-region services will, as the Commission concluded in imposing the out-of-region commitment, foster competition outside of Verizon's monopoly territory. Allowing Verizon to game the system as it has requested will not foster competition in any way. Verizon's request should be denied.

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<sup>9</sup> See "Verizon Raises Earnings Targets To Reflect Termination of NorthPoint Merger Agreement," available at <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=46428> (rel. Nov. 30, 2000).

<sup>10</sup> See Verizon 2001 Operating Results press release, available at [http://investor.verizon.com/news/VZ/print\\_2001-02-01\\_X300640.html](http://investor.verizon.com/news/VZ/print_2001-02-01_X300640.html) (rel. Feb. 1, 2001).

<sup>11</sup> Verizon wrote off \$153 million in its restated 4Q 2000 earnings. <http://investor.verizon.com/financial/quarterly/VZ/4Q2000/4Q00restated.xls>

Respectfully submitted,

/s/ Jason Oxman

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